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**From:** Bell, Brian  
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**Subject:** Comments on ING08

Hi Catherine. I got ahead of myself on this one. Once these comments are addressed, I will recommend that a no objection letter be sent to IDEM. Here are my comments. I am particularly interested if IDEM plans to expand the list of parameters sampled for beyond Benzene. Please contact me if you have further questions

### **EPA Comments on Permit No. ING08000**

1. Is this permit specifically for remediation of gasoline contaminated ground water as described in Part F of the Fact Sheet under Wastewater Characterization? Part 1.2 of the permit and Part A of the Fact Sheet appear to address a broader class of discharges.
2. Part 2.0 of the permit incorrectly references exceptions in Part 1.2. The correct reference is 1.3.
3. Part 3.4b of the permit requires a description of the activities conducted at the site resulting in the discharge. It is our understanding that IDEM is developing the Notice of Intent (NOI) for this general permit and that the NOI will include a list of potential pollutants parameters for the discharger to better characterize its their discharges. Does IDEM intend to revise Part 3.4b to include additional monitoring for pollutants such as the other BTEX parameters, Naphthalene, and Methyl tertiary butyl ether (MTBE) and Tertiary butyl Alcohol (TBA) which were used as gasoline additives?
4. Part 4.0 of the permit incorrectly references eligible discharges in Part 1.3. The correct reference is 1.2.
5. The monitoring frequency for Total Flow, Benzene and pH shown in Part 6.1 (Tables 1 and 2) is once per month as stated in the fact sheet. Part 7.2 of the permit requires a monitoring frequency of once per day per discharge for all parameters. Please revise Part 7.2 to be consistent with Part 6.1.
6. 8.18 Upset condition:

Under 40 CFR 122.41(n), the affirmative defense of "upset" is only available where the permittee can demonstrate that the conditions specified at 40 CFR 122.41(n)(3) are met. One of those conditions is that the permittee must demonstrate that "[a]n upset occurred and that the permittee can identify the cause(s) of the upset." 40 CFR 122.41(n)(3)(i). Thus, the upset defense is not available in situations where the permittee is unable to identify the cause(s) of the upset.

The upset provisions in Section II.B.3 of the Gary permit appear to be inconsistent with this federal requirement. Specifically, Section II.B.3.c(1) provides that the permittee must demonstrate, among other thing, that "[a]n upset occurred and the permittee has identified the specific cause(s) of the upset, **if possible**" (emphasis added). Thus, it appears that a permittee could establish the upset defense under the Gary permit provisions without identifying the cause(s) of the upset. This problem could be remedied by deleting the phrase "if possible."

Also, the **burden of proof** provisions are missing in the Gary permit as stated in 40 CFR 122.41(n), "In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof."